

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In re Complaint Against WCBS-TV

COMPLAINT

INTRODUCTION

“Rigging or slanting the news is a most heinous act against the public interest -- indeed, there is no act more harmful to the public’s ability to handle its affairs. In all cases where we may appropriately do so, we shall act to protect the public interest in this important respect.” *In Re Complaints Covering CBS PROGRAM “HUNGER IN AMERICA,”* 20 F.C.C.2d 143, 151 (Oct. 15, 1969). “Broadcasters are public trustees licensed to operate in the public interest and, as such, may not engage in intentional falsification or suppression of news.” *In Re Application of KMAP, Inc.,* 72 F.C.C.2d 241, 244 June 12, 1979). “[T]he Commission endeavors to balance the licensee’s obligation to operate in the public interest with the licensee’s editorial judgment.” *In re applications of Stockholders of CBS,* 11 FCC Rcd 3733, 3746 (Nov. 22, 1995). The Commission investigates “extrinsic evidence” such as “outtakes” to determine whether “the licensee has deliberately suppressed or altered a news report.” *Id.*

This complaint concerns an act of significant and substantial news alteration, made in the middle of a heated presidential campaign. Moreover, in this instance we have the clear external evidence of outtakes necessary for this Commission to act. *Hunger in America*, 20 F.C.C.2d at 151; *In re Application of WGPR, Inc.*, 10 FCC Rcd 8140, 8148 (July 17, 1995).

WCBS TV aired the Sunday CBS morning news show “Face the Nation” on Sunday, October 5. It also aired the CBS program “Sixty Minutes” on Monday, October 6. The two programs featured the same question asked to Vice President Kamala Harris, with two completely different answers.

In the first clip, CBS journalist Bill Whitaker asks the Vice President about Israeli Prime Minister Benjamin Netanyahu: “But it seems that Prime Minister Netanyahu is not listening.”

In that clip, Harris replies: “Well, Bill, the work that we have done has resulted in a number of movements in that region by Israel that were very much prompted by or a result of many things, including our advocacy for what needs to happen in the region.”

In the second clip, Whitaker asks the exact same question. But in this clip, Harris replies: “We are not gonna stop pursuing what is necessary for the United States to be clear about where we stand on the need for this war to end.”

Same interview, same question, two completely different answers.

Under this Commission's long-standing precedent, CBS retains the right to exercise news judgment when editing its material. And that kind of editing is normal in the context of a news magazine style show like "Sixty Minutes."

However, CBS crosses a line when its production reaches the point of so transforming an interviewee's answer that it is a fundamentally different answer. This CBS may not do. *See In Re COMPLAINT CONCERNING THE CBS PROGRAM "THE SELLING OF THE PENTAGON,"* 30 F.C.C.2d 150 (April 28, 1971); *In re Application of WGPR, Inc.*, 10 FCC Rcd at 8148. Here, CBS has taken a single question and transformed Harris' answer such the general public no longer has any confidence as to what the Vice President actually said in response to the query.

Moreover, CBS has refused to provide the complete transcript of the show despite numerous requests and precedent for it doing so on high-profile interviews. This has led journalist Mollie Hemingway to write, "The fact that CBS 60 Minutes is refusing to release the full, unedited transcript of its interview with Kamala Harris is a huge scandal. [It s]uggests that much of the entire finished product was manipulative and deceitful, and not just the one horrible example that was discovered."¹ Strong and prompt action by the Commission is necessary to restore

¹ <https://x.com/MZHemingway/status/1845170976616583339>

public confidence in the broadcast and to clarify this matter of national interest and importance.

DEFENDANT STATION

WCBS is a licensed television broadcast station in New York, facility number 9610. It is owned by CBS Broadcasting Inc. Its address is 524 West 57th Street, New York, NY 10019.

WCBS's VIOLATION OF 47 U.S.C. § 309(a)

News distortion is incorporated in the public-interest standard for broadcasters, 47 U.S.C. § 309(a). “[T]o violate the news distortion policy, the distortion must be about a significant matter and not merely something trivial or incidental.” Lili Levi, *Reporting the Official Truth: The revival of the FCC's news distortion policy*, 78 Wash. U. L. Q. 1005, 1023 (2000). Here, the question is incredibly consequential—U.S. foreign policy toward the Middle East in the middle of a war—and the timing is also significant: weeks before a presidential election, and with a candidate who has sat for very few news interviews.

The Complainant is not asking the Commission to censor CBS News or to invade CBS News' free speech. *See* 42 U.S.C. § 326. The U.S. Supreme Court has squarely held that Commission does not transgress Section 326 by reviewing licensees' past conduct under the public-interest standard. *FCC v. Pacifica Found.*, 438 U.S. 726, 735 (1978). Rather, the Court has held that the Commission acts

appropriately in executing Congress's desire "to assure that the public receives through this medium a balanced presentation of information on issues of public importance." *FCC v. League of Women Voters*, 468 U.S. 364, 377 (1984). *Accord Columbia Broadcasting System, Inc. v. Democratic Nat'l Committee*, 412 U.S. 94, 125 (1973) ("the public interest in being informed requires periodic accountability on the part of those who are entrusted with the use of broadcast frequencies"). Here, accountability is necessary when the public is disserved by news distortion.

RELIEF SOUGHT

Direct CBS to release the complete transcript of the Vice President's interview with "Sixty Minutes." The need for the Commission's action is strengthened by CBS's refusal thus far to release the transcript, which it has done in similar interviews in the past. The Commission's directive to first approach the station or sponsor for resolution of news distortion claims, *see, e.g., Hunger in America*, 20 FCC 2d at 151, has already proven inadequate in this instance.²

² Complainant reserves the right to request the recusal of any FCC commissioner who reviews this matter in the future who prejudged this issue without seeing any evidence or legal argument. *See* Mike Snider, "FCC chair condemns Trump's call for CBS to lose license," USA Today (Oct. 11, 2024). *See also In re "Selling of the Pentagon,"* 30 F.C.C.2d at 155 (Statement of Chairman Burch) ("Commissioner Johnson has a perfect right to speak out on this or any other controversial issue. But he cannot have it both ways. He cannot be both a public advocate -- defending the program in print -- and then sit as a judge on charges alleging unfairness and distortion in the program.").

CONCLUSION

“The FCC has had a policy against ‘news distortion’ in over-the-air broadcast (local TV and radio stations) news for over 50 years.” FCC Consumer Guide, *Broadcast News Distortion* (2024). Here, CBS engaged in news distortion by editing its news program to such a great extent that the general public cannot know what answer the Vice President actually gave to a question of great importance on a matter of national security policy.

/s/Daniel R. Suhr

Daniel R. Suhr

Center for American Rights

747 N. LaSalle St., Suite 210

Chicago, IL 60654

dsuhr@americanrights.org

Attorney licensed in Wisconsin

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APPENDIX A

FACE THE NATION PREVIEW CLIP:

Whitaker: “We supply Israel with billions of dollars in military aid, and yet Prime Minister Netanyahu seems to be charting his own course. The Biden-Harris administration has pressed him to agree to a cease-fire. He’s resisted. You urged him not to go into Lebanon. He went in anyway. He has promised to make Iran pay for the missile attack, and that has the potential of expanding the war. Does the U.S. have no sway over Prime Minister Netanyahu?”

Harris: “The aid that we have given Israel allowed Israel to defend itself against 200 ballistic missiles that were just meant to attack the Israelis and the people of Israel. And when we think about the threat that Hamas, Hezbollah, presents, Iran, I think that it is without any question our imperative to do what we can to allow Israel to defend itself against those kinds of attacks. Now, the work that we do diplomatically with the leadership of Israel is an ongoing pursuit around making clear our principles, which include the need for humanitarian aid, the need for this war to end, the need for a deal to be done which would release the hostages and create a cease-fire. And we’re not gonna stop in terms of putting that pressure on Israel and in the region including Arab leaders.”

Whitaker: “But it seems that Prime Minister Netanyahu is not listening.”

Harris: “Well, Bill, the work that we have done has resulted in a number of movements in that region by Israel that were very much prompted by, or a result of, many things including our advocacy for what needs to happen in the region.”

Whitaker: “Do we have a real close ally in Prime Minister Netanyahu?”

Harris: “I think, with all due respect, the better question is, ‘Do we have an important alliance between the American people and the Israeli people’? And the answer to that question is, ‘Yes.’”

APPENDIX B

SIXTY MINUTES CLIP:

Whitaker: "We supply Israel with billions of dollars in military aid, and yet Prime Minister Netanyahu seems to be charting his own course. The Biden-Harris administration has pressed him to agree to a cease-fire. He's resisted. You urged him not to go into Lebanon. He went in anyway. Does the U.S. have no sway over Prime Minister Netanyahu?"

Harris: "The work that we do diplomatically with the leadership of Israel is an ongoing pursuit around making clear our principles."

Whitaker: "But it seems that Prime Minister Netanyahu is not listening."

Harris: "We are not gonna stop pursuing what is necessary for the United States to be clear about where we stand on the need for this war to end."